

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

THOMAS C. SHRADER,
Petitioner,
v.
M. ARVIZA,
Respondent.

Case No. 1:22-cv-01413-HBK (PC)

ORDER TO SHOW CAUSE WHY ACTION
SHOULD NOT BE DISMISSED FOR LACK
OF STANDING AND FAILURE TO
EXHAUST ADMINISTRATIVE REMEDIES

SEPTEMBER 6, 2023 DEADLINE

Thomas Shrader (“Shrader” or “Petitioner”) is a federal inmate proceeding pro se and *in forma pauperis* in this action filed under 28 U.S.C. § 1361. (Doc. Nos. 1, 8). Schrader initiated this action by filing a writ of mandamus requesting the Court to order the Warden at Federal Corrections Institution Mendota, M. Ariviza, to rescind the restrictions imposed by her August 31, 2022 Memo which limits commissary purchases to \$50.00 a month, two five-minute phone calls per day, and five emails for all inmates within a housing unit that experiences a drug related incident. (*See generally* Doc. No. 1, “Petition”). Schrader also acknowledges on the face of his Petition that he did not exhaust his administrative remedies. (*Id.* at 1).

JURISDICTION

“Standing to sue is a doctrine rooted in the traditional understanding of a case or controversy.” *Spokeo Inc. v. Robins*, 578 U.S. 330, 338 (2016). To establish Article III standing, three elements must be satisfied: a “plaintiff must have (1) suffered an injury in fact, (2) that is

1 fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed
 2 by a favorable judicial decision.” *Id.* (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61
 3 (1992)). The plaintiff, as the party invoking federal jurisdiction, bears the burden of establishing
 4 these elements. *Id.* (citing *FW/PBS, Inc. v. Dallas*, 493 U.S. 215, 231, (1990)). Where, as here, a
 5 case is at the pleading stage, the plaintiff must “clearly ... allege facts demonstrating” each
 6 element. *Id.* (citing *Warth v. Seldin*, 422 U.S. 490, 518 (1975)).

7 Petitioner appears to lack standing because he cannot show an injury from the challenged
 8 restrictions that limit commissary purchases, phone calls, and emails. Prisoners have no right to
 9 unlimited commissary purchases. *Keenan v. Hall*, 83 F.3d 1083, 1092 (9th Cir. 1996) (holding
 10 that there is no constitutional right to canteen products); *Jones v. Shinn*, 2014 WL 366769, at *4-5
 11 (D. Haw. Jul. 21, 2014) (“limiting an inmate’s purchases from the prison commissary, without
 12 more, does not deny an inmate the minimal necessities of life or violate the Eighth
 13 Amendment.”). Nor do prisoners have a right to unlimited telephone access. *Valdez v.*
 14 *Rosenbaum*, 302 F.3d 1039 (9th Cir. 2002). Instead, a prisoner’s right to telephone access is
 15 “subject to reasonable limitations arising from the legitimate penological and administrative
 16 interests of the prison system.” *Johnson v. California*, 207 F.3d 650, 656 (9th Cir. 2000). And
 17 prisoners do not have a right to unlimited email or other electronic communications. Rather
 18 prison officials may limit a prisoner’s access to email so long as there are other forms of speech
 19 available. *Glick v. Montana Dept. of Corr.*, 2009 WL 2959730, at *2 (D. Mont. May 7, 2009);
 20 *see also Lumbumba v. Blevins*, 2022 WL 463105, at *3-4 (W.D. Va. Feb. 15, 2022) (“Courts have
 21 held... that inmates *do not* have an identical constitutional right to receive or send electronic
 22 messages, better known as emails[,]” and “[w]hen a prison system permits inmates to utilize
 23 multiple means of outside communications, prison authorities may lawfully impose reasonable
 24 time, place, and manner restrictions on the use of one or more of those communications without
 25 infringing on inmates’ First Amendment rights to free speech.”) (citing *Dunlea v. Fed. Bureau of*
 26 *Prisons*, 2010 WL 1727838, at *2 (D. Conn. Apr. 26, 2010) *abrogated on other grounds by*
 27 *Analytical Diagnostic Labs, Inc. v. Kusel*, 626 F.3d 135 (2d Cir. 2010); *Pell v. Procunier*, 417
 28 (U.S. 817-28 (1974) (emphasis in original) (other citation omitted))). Thus, Petitioner must show

1 cause in writing why this action should not be dismissed due to his lack of standing to challenge
2 the restrictions imposed by the Warden's August 31, 2022 Memo.

3 EXHAUSTION OF ADMINISTRATIVE REMEDIES

4 Under the Prison Litigation Reform Act of 1995, "[n]o action shall be brought with
5 respect to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by a prisoner
6 confined in any jail, prison, or other correctional facility until such administrative remedies as are
7 available are exhausted." 42 U.S.C. § 1997e(a). Exhaustion is a condition precedent to filing a
8 civil rights claim. *Woodford v. Ngo*, 548 U.S. 81, 93 (2006); *see also McKinney v. Carey*, 311
9 F.3d 1198, 1200 (9th Cir. 2002) ("Congress could have written a statute making exhaustion a
10 precondition to judgment, but it did not. The actual statute makes exhaustion a precondition to
11 suit." (citations omitted)). The exhaustion requirement "applies to all inmate suits about prison
12 life." *Porter v. Nussle*, 534 U.S. 516, 532 (2002). Further, the nature of the relief sought by the
13 prisoner, or the relief offered by the prison's administrative process is of no consequence. *Booth*
14 *v. Churner*, 532 U.S. 731, 741 (2001). And, because the PLRA's text and intent requires
15 "proper" exhaustion, a prisoner does not satisfy the PLRA's administrative grievance process if
16 he files an untimely or procedurally defective grievance or appeal. *Woodford*, 548 U.S. at 93. A
17 prisoner need not plead or prove exhaustion. Instead, it is an affirmative defense that must be
18 proved by defendant. *Jones v. Bock*, 549 U.S. 199, 211 (2007). A prison's internal grievance
19 process, not the PLRA, determines whether the grievance satisfies the PLRA exhaustion
20 requirement. *Id.* at 218. However, courts may dismiss a claim if failure to exhaust is clear on the
21 face of the complaint. *See Albino v. Baca*, 747 F.3d 1162, 1166 (9th Cir. 2014).

22 "In order to be entitled to mandamus relief...a plaintiff must exhaust his administrative
23 remedies, thereby demonstrating he has no adequate remedy at law, and also show that the
24 defendant had a plainly defined and preemptory duty to perform the act in question." *Kosterow v.*
25 *McGrew*, 2012 WL 6923676, at *3 (C.D. Cal. Nov. 26, 2012) (citations omitted). Based on the
26 face of the Petition, Petitioner did not exhaust his administrative remedies prior to filing this case.
27 Petitioner additionally shall show cause in writing why this action should not be dismissed for a
28 failure to exhaust his administrative remedies.

Accordingly, it is **ORDERED**:

1. No later than **September 6, 2023**, Petitioner shall deliver to correctional officials to mailing his response to this Order and show cause why this action should not be dismissed for lack of standing and/or for failing to exhaust his administrative remedies before filing suit.

2. In the alternative, to avoid a strike under the Prison Litigation Reform Act (“PLRA”),¹ Petitioner may file a notice of voluntarily dismissal under Fed. R. Civ. P. 41(a)(1).

3. Petitioner’s failure to timely respond to this order will result in the recommendation that the district court dismiss this action due to Petitioner’s lack of standing and failure to exhaust his administrative remedies prior to initiating this action, which shall constitute a strike under the PLRA.

Dated: August 22, 2023


HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE

¹ Under § 1915(g), “the three-strikes bar,” prisoners who have had on three or more prior occasions a case dismissed as frivolous, malicious, or for failure to state a claim may be barred from proceeding in forma pauperis in future civil actions and required to prepay the filing fee in full. *Lomax v. Ortiz-Marquez*, 140 S. Ct. 1721, 1723 (2020); *see also Andrews v. Cervantes*, 493 F.2d 1047, 1052 (9th Cir. 2007). Regardless of whether the dismissal was with or without prejudice, a dismissal for failure to state a claim qualifies as a strike under § 1915(g). *Lomax*, 140 S. Ct. at 1727.